

IN THE COURT OF APPEALS OF IOWA

No. 3-776 / 13-1020
Filed August 7, 2013

IN THE INTEREST OF K.B. and D.S.
Minor Children,

D.B., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Terry Wilson, District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Jeremy B.A. Feitelson of Feitelson Law, L.L.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Annette Taylor, Assistant County Attorney, for appellee.

Kimberly Ayotte of Youth Law Center, Des Moines, attorney and guardian ad litem for minor children.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

A mother appeals the termination of her parental rights to her children, K.B. and D.S.¹ The children were removed from her custody after she was arrested for possession with intent to deliver (marijuana). Since that time, the mother has not shown that she is any more prepared to care for the children properly after reasonable services have been provided to her. Additional time granted to the mother is not in the children's best interest notwithstanding the parent-child bond. We affirm.

I. Background Facts and Proceedings.

D.S. was born in May 2004 and was nine years old at the time of the termination hearing. K.B. was born in June 2007 and was five years old at the time of the hearing.

The children were removed from their parents' custody on April 24, 2012, after their mother was arrested for possession of and intent to deliver marijuana. She also admitted to personally using the substance. Once the mother became aware of the removal order, she fled with the children to Illinois.

On June 1, 2012, the children were adjudicated children in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(b), (c)(2), and (n) (2012). The caretakers of the children were still refusing to return the children to the State of Iowa, despite the court's order to do so. An order for interstate warrant was signed and issued requiring the children to be returned to the Iowa Department of Human Services' (DHS) custody. The children were returned to

¹ The father's parental rights were also terminated. He does not appeal.

the State of Iowa on June 5, 2012, through the efforts of DHS and the guardian ad litem. At that time, they were placed in shelter care until June 22, 2012, when they were placed in their current foster home.

The mother was jailed in June 2012 after missing a court hearing regarding the criminal charges against her. She remained incarcerated until August 17, 2012. During the time, she was not able to have regular visits with the children.

On June 27, 2012, a disposition hearing was held. The court ordered that the children were to remain in out-of-home placement due to the mother's unresolved substance abuse issues. The case permanency plan that was adopted required the mother to participate in random drug screens, undergo a substance abuse evaluation and follow all resulting recommendations, comply with the children's individual therapy, abstain from mood altering substances, comply with the terms of her criminal charges, and follow all laws. The disposition was continued following a review hearing.

The review hearing was held on December 18, 2012. At the hearing, the court found that the mother continued to have unresolved substance abuse issues.

In early April 2013, the mother was arrested for probation violation. The violation consisted of failure to meet with her probation officer as scheduled, failure to complete required drug screens, and delinquency in paying fines.

Following the mother's arrest and incarceration, the court held the permanency hearing on April 23, 2013. The State filed a petition to terminate parental rights two days later.

The termination hearing was then held on May 29, 2013. The mother testified she was still incarcerated in Polk County but was currently on a waiting list to be moved to the women's rehabilitation facility to complete her term of incarceration. She did not know when the transfer would take place. Once transferred, it would take at least two months before she would be able to leave the facility and return to the community. The mother admitted that the children could not be returned to her care at the time of the hearing, but requested a six-month extension from the court.

The mother did have periods of time when she consistently participated in scheduled visits with the children, but, in the months leading up to her April 2013 incarceration, she missed seven scheduled visits. As a result of the neglect the children suffered before DHS became involved, both needed extensive dental care, therapy, and extra work and attention regarding their education. Although participation in all of the children's services was recommended to the mother and strongly encouraged by DHS, the mother missed all dental appointments, including surgical ones. She attended only one therapy session and some of the doctor appointments. In the months leading up to the termination hearing, the mother was charged with the responsibility of taking the children to therapy and scheduling appointments. However, the children missed their appointment and no further ones were scheduled. The mother told DHS that she was not ready to

handle the responsibility and asked that the foster parents resume the task. During the year-long duration of DHS's involvement with the family, the mother was unable to obtain safe and permanent housing and was unable to maintain steady employment.

Following the hearing, the court found that the children could not be returned to the mother as she was incarcerated at the time. In its denial of her request for a six-month extension, the court doubted the probability that the mother's circumstances would be sufficiently improved within the time:

I think she is very optimistic . . . as to the way she'll get into the women's facility, as to how long she'll be there, that's assuming that everything goes perfect and she would have to have a steady job, housing. She has not shown in the past year that she could hold a steady job or have housing when she had the opportunity last fall.

The court then terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(b) and (f) (2013). She appeals.

II. Standard of Review.

Our review of termination decisions is *de novo*. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the juvenile court's findings, especially assessing witness credibility, although we are not bound by them. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Discussion.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. *P.L.*, 778 N.W.2d at 39. The court must first determine whether a ground for termination under section 232.116(1) has been established. *Id.* If a ground for termination has been established, the court must apply the best-interest framework set out in section 232.116(2) to decide if the ground for termination should result in termination of parental rights. *Id.* Finally, if the statutory best-interest framework supports termination of parental rights, the court must consider if any of the statutory exceptions set out in section 232.116(3) weigh against the termination of parental rights. *Id.*

A. Grounds for Termination.

When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. Iowa Code section 232.116(1)(f) provides that termination may be ordered when there is clear and convincing evidence the child is four years of age or older, has been adjudicated a child in need of assistance, has been removed from the physical custody of the parent for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days, and cannot be returned to the parent's custody at the time of the termination hearing.

In this case, the mother claims there was not clear and convincing evidence that her parental rights should be terminated under 232.116(1)(f). However, she does not dispute that the children were both four years of age or older, had been adjudicated children in need of assistance, and had been removed from her physical

custody for at least twelve of the last eighteen months, or for the last twelve consecutive months with any trial period at home being less than thirty days. As she did at trial, the mother stresses that she is now receiving appropriate treatment and assistance. She contends that she will be in a position to care for her children properly within a few months time, after she completes her time at the women's residential facility. She maintains that within in few months, she will have a steady job and appropriate housing as required by DHS.

Even if the mother is released and is able to obtain housing and employment within a few months, the question before the court was whether the children could be returned to their mother's custody at the time of the termination hearing. The mother acknowledges that she was not presently able to have the children returned to her at the time of the hearing. Clear and convincing evidence exists to terminate parental rights under section 232.116(1)(f).

B. Best Interest of the Child.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interest of the child, we give primary consideration to "the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional conditions and needs of the child." See Iowa Code § 232.116(2).

The district court found that it was in the children's best interest to terminate the mother's parental rights. Both children have ongoing mental and physical needs that require the intervention of outside personnel. The mother has not been actively involved in attending and scheduling these appointments. At trial, she could not

name any of the children's diagnoses and did not know what medication they had been prescribed. DHS tried to involve her and make her more responsible for the children's well-being by having her transport the children to their therapy sessions as well as charging her with scheduling the sessions. The children missed the appointment and the mother failed to schedule any others. She admitted to DHS that she was not ready to handle the responsibility. The court must consider what the future holds for the children if they are returned to their mother. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). "Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing." *Id.* We agree with the juvenile court that it is in the children's best interest to terminate the mother's parental rights.

C. Exceptions or Facts against Termination.

Finally, we consider whether any exception or factor in section 232.116(3) weighs against termination of parental rights. *P.L.*, 778 N.W.2d at 39. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the facts in the section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

The mother contends termination of her parental rights is not necessary because of the closeness of the parent-child relationship between the children and herself. See § 232.116(3)(c). The record confirms that the children do love and have a strong bond with their mother. However, the record also shows that the

children “are extremely reactive to their mom and her inability to follow through. They experience a lot of stress and adjustment issues with being in limbo and not knowing what the plan is for them.” The children have endured enough hardship in their lives and deserve some stability. We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

D. Extension of Time.

The mother’s request for additional time to complete the women’s residential facility and be in a position to care for the children was denied by the juvenile court. Although the mother has not delineated the denial of an extension of time as a specific issue on appeal, we choose to address it. An additional six months may be granted by the court if the court expects the children’s removal to no longer be necessary at the conclusion of the extension. See Iowa Code §§ 232.104(2)(b), 232.117(5). However, in the year leading up to the termination hearing, the mother was never able to maintain steady housing or employment. Rather, she continued to choose criminal activities over reunification with her children. “Children simply cannot wait for responsible parenting. . . . It must be constant, responsible, and reliable.” *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

In our de novo review, we agree with the juvenile court’s denial of the extension as the children should not be required to wait in limbo while the parent possibly demonstrates her ability to parent. See *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997) (“A parent does not have an unlimited amount of time in which to correct his or her deficiencies.”).

IV. Conclusion.

There is clear and convincing evidence the grounds for termination exist under section 232.116(1)(f), termination of parental rights is in the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. Accordingly, we affirm termination of the mother's parental rights.

AFFIRMED.